



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

TRG

Docket No: 5186-98

15 May 2000

From: Chairman, Board for Correction of Naval Records
To: Secretary of the Navy

Subj: REVIEW OF NAVAL RECORD OF [REDACTED]

Ref: (a) Title 10 U.S.C. 1552

Encl: (1) Case Summary
(2) Subject's naval record

1. Pursuant to the provisions of reference (a), Petitioner, a former enlisted member of the United States Navy filed an application with this Board requesting, in effect, that the record be corrected to show that he retired from the Navy instead of being discharged.

2. The Board, consisting of Mr. Dunn, Mr. Pfeiffer and Ms McCormick, reviewed Petitioner's allegations of error and injustice on 2 May 2000 and, pursuant to its regulations, determined that the corrective action indicated below should be taken on the available evidence of record. Documentary material considered by the Board consisted of the enclosures, naval records, and applicable statutes, regulations and policies.

3. The Board, having reviewed all the facts of record pertaining to Petitioner's allegations of error and injustice, finds as follows:

a. Before applying to this Board, Petitioner exhausted all administrative remedies available under existing law and regulations within the Department of the Navy.

b. Petitioner's application was filed in a timely manner.

c. On 18 June 1993 Petitioner reenlisted in the Navy for three years in the rate of ABE2 (E-5). At that time, he had completed about 16 1/2 years of active service on prior enlistments. The record shows that he served in a satisfactory manner without any disciplinary infractions throughout his career in the Navy.

d. On 27 October 1994 Petitioner was arrested by civil authorities and charged with soliciting an undercover policeman to perform a homosexual act and exposing himself in the restroom of a department store. Subsequently, he was convicted of criminal solicitation. Apparently, sentencing was deferred pending completion of a period of probation.

e. On 13 February 1995 Petitioner was notified of separation processing by reason of homosexual conduct. An administrative discharge board (ADB) convened on 16 March 1995. During the ADB Petitioner submitted evidence showing that he was under intense stress because his wife was mentally ill and hospitalized much of the time. He contended that his actions which led to discharge processing were an aberration and would not reoccur.

f. The ADB unanimously found that he had committed misconduct as evidenced by his solicitation of another individual to engage in homosexual acts. However, the ADB recommended, by a 2 to 1 vote, that he be retained in the Navy. On 3 May 1995 the commanding officer recommended that he be discharged from the Navy stating, in part, as follows:

...After fully reviewing documents relevant to this case, too many details suggest that (Petitioner) knew what he was doing. I find it highly unlikely that the respondent's actions immediately prior to his arrest were merely coincidental. I feel this was not a departure from the member's usual and customary behavior and further that his continued presence in the military is not in the best interest of morale, good order and discipline. (Petitioner) has served the Navy well, however, I strongly believe his actions warrant discharge as characterized by his service record.

g. Since Petitioner had over 18 years of active service, the Assistant Secretary of the Navy had to approve discharge. No such action is filed in the service record. However, on 26 October 1995, the Bureau of Naval Personnel directed discharge and noted that the Secretary of the Navy had approved Petitioner's separation. He was honorably discharged on 1 December 1995. At that time he had completed 19 years, 1 month and 12 days of active service.

h. At the time of his discharge, Petitioner was eligible for retirement under the provisions of the Temporary Early Retirement Authority (TERA) set forth in Public Law 102-484. However, it does not appear that individual's in Petitioner's rate were afforded the opportunity for TERA retirement. Additionally, Navy policy precluded TERA retirement for those individuals facing administrative separation. In addition, the Board is aware that if he had completed 20 years of service, he could not be administratively discharged without being given an opportunity to transfer to the Fleet Reserve.

CONCLUSION:

Upon review and consideration of all the evidence of record the Board concludes that Petitioner's request warrants favorable action. The Board is aware that Petitioner served in a completely satisfactory manner during his entire career in the Navy, except for the incident which lead to his discharge. The Board does not condone his misconduct but notes that he did have extensive personal problems which may have had an impact on his behavior. Further, a majority of the ADB recommended that he be retained to qualify for retirement. Finally, the Board notes that he had sufficient service to qualify for retirement under the law authorizing TERA. Alternatively, he could have transferred to the Fleet Reserve if he had been permitted to serve for an additional year and attain 20 years of service.

Since denial of retirement is a lifelong punishment and given the circumstances of the case, the Board concludes that the record should be corrected to show that he transferred to the Fleet Reserve under the provisions of TERA on 30 November 1995 vice being discharged on 1 December 1995.

The Board further concluded that this Report of Proceedings should be filed in Petitioner's naval record so that all future reviewers will understand his status in the Fleet Reserve.

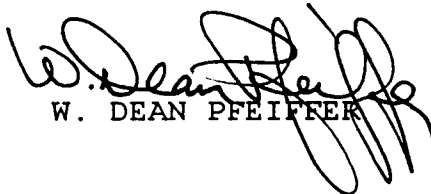
RECOMMENDATION:

- a. That Petitioner's naval record be corrected to show that on 30 November 1995 he transferred to the Fleet Reserve under the provisions of TERA vice being discharged on 1 December 1995.
- b. That this Report of Proceedings be filed in Petitioner's naval record.
4. It is certified that a quorum was present at the Board's review and deliberations, and that the foregoing is a true and complete record of the Board's proceedings in the above entitled matter.

ROBERT D. ZSALMAN
Recorder

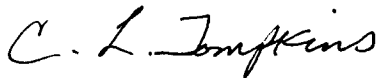

ALAN E. GOLDSMITH
Acting Recorder

5. The foregoing report of the Board is submitted for your review and action.


W. DEAN PFEIFFER

Reviewed and approved:

JUN 14 2000



CHARLES L. TOMPKINS
Deputy Assistant Secretary of the Navy
(Personnel Programs)